

**PROPOSAL/AGREEMENT TO PROVIDE
Prop 39 District Energy Reporting Services**

For

Lake County Office of Education
1152 S. Main St. Lakeport, CA 95453

Brock Falkenberg
Superintendent

Prepared by:

Indoor Environmental Services
1512 Silica Avenue
Sacramento, CA 95815
(916) 988-8808

PURPOSE OF AGREEMENT

Indoor Environmental Services (“IES”) is pleased to offer our assistance to Lake County Office of Education (“District”). IES will assist the District with an IES Energy Manager to work with District personnel to aide in the energy reporting requirements for the District.

CONTRACT DELIVERY METHOD FOR PROJECT IMPLEMENTATION

IES will utilize Prop 39 funding, if applicable, per the mandated requirements.

PROP 39 ENERGY REPORTING SERVICES

Complete documentation and reporting to the California Energy Commission (CEC) to meet Proposition 39 project annual progress and final reporting requirements below. IES will use available methods developed by the CEC including program calculators and reporting forms for project energy savings.

ANNUAL PROGRESS REPORT

Submitted annually for all current or open projects:

- Amount spent to-date on energy manager and training services
- Amount spent to-date on all and each energy efficiency measure (EEM) on a per-site bases
- Estimated start and end date and written summary narrative of project status.
- DIR Project ID for all contractors on project (if applicable)

FINAL REPORT

Submitted 12-15 months after project completion:

Information per LEA or District:

- Amount spent to-date on energy manager and training services
- Supporting documents of project completion
 - Updated savings calculation or post-project energy saving report
 - Pictures of installed measures

Information per site:

- Project start and end date and written summary narrative of project status.
- Benchmarking:
 - All utility data usage and charges including on-site generation information
 - Updated Square footage of all sites
- Energy Efficiency Measure information:
 - Energy and cost saving information
 - Amount spent on each energy EEMs on a per-site bases
- DIR Project ID for all contractors on project (if applicable)

Per Code Guidelines and Regulations, IES will complete the Services as listed. IES will not perform additional services without prior District authorization.

SCOPE ASSUMPTIONS AND CLARIFICATIONS

- This Scope of Work is based on the assumption that unfettered access to any work areas and school sites will be provided to IES.
- Full access to online CEC and utility accounts including approval to obtain utility billing information.
- Coordination with appropriate staff for updates and information gathering as necessary.
- Additional tasks as requested by the District above and beyond this scope will be billable.
- IES will not perform additional services without prior authorization.

SCOPE EXCLUSION

The following exclusions have not been estimated in the above Scope of Work:

- Warranty, repair and/or upgrades to the existing control and mechanical or electrical systems and system components installed at District sites.
- Any and all system defects as a result of pre-existing condition.
- Overtime labor.
- Any and all other items not specified in this scope.

Services TERM Summary:

Services will be implemented for a term of 12 months:

Total Proposition 39 Energy Manager	
Energy Planning Activities	Funding
Energy Manager	\$ 7,500

Invoice will be submitted to the District upon signed agreement.

This agreement is between the District and Indoor Environmental Services.

Brock Falkenberg
Superintendent

Stan Butts
Vice President, IES

Date

Date

TERMS OF SERVICE - INDOOR ENVIRONMENTAL SERVICES GENERAL TERMS AND CONDITIONS

These General Terms and Conditions ("Terms") are incorporated into and are made a part of a work authorization, proposal, or contract (the "Contract") between Farnand, Inc., a California corporation, dba Indoor Environmental Services ("IES") and the customer identified in the Contract (the "Customer"). Each of IES and the Customer, and each of their successors-in-interest, are sometimes individually referred to as a "Party" and collectively as the "Parties." IES has agreed to provide the labor (the "Services") and Materials (defined below) (collectively, the "Work") at the location (the "Job Site") for the price (the "Price") specified in the Contract. The Contract, all of its relevant addenda, and these Terms are collectively referred to as the "Agreement".

1. *Performance of Services.* IES will perform the Services in a good and workmanlike manner. IES warrants that the Services will be free from defects in workmanship for a period of one year from the date the Services are first performed. Defects that occur within the one-year warranty period, under normal use and care, will be repaired or replaced at the sole discretion of IES with no charge for the labor.
2. *Disclaimer of All Warranties.* IES does not provide any warranty with respect to any materials, equipment, assemblies, or units (collectively, the "Materials") that IES will provide as part of the Work. All Materials are subject only to manufacturer's or processor's warranties, if any. Except as provided in Section 1 above, IES specifically disclaims all warranties with respect to the Services and Materials, and the Customer is acquiring all Services and Materials from IES as is, without any express or implied warranties, including without limitation, any warranty as to merchantability, fitness for a particular use, title, and infringement.
3. *Limitation on Liability.* In no event shall IES be liable to Customer or any of its shareholders, directors, officers, employees, agents, or to any other third party, whatsoever the nature of the claim, for any amount in excess of the total amount actually paid by Customer to IES under the Contract for the Services, unless it is finally determined that IES was grossly negligent or acted willfully or fraudulently. In no event shall IES be liable for any special, consequential, indirect, exemplary, punitive, lost profits, or similar damages, even if IES has been apprised of the possibility thereof. IES will not be liable for any failure or delay in the performance of its obligations hereunder by reason of any cause which is beyond its reasonable control.
4. *Insurance.* Customer shall continuously provide, at its sole expense, adequate property damage and public liability insurance to cover the scope of all contemplated activities and the value of all Services and Materials involved in the Contract, as well as all reasonable potential claims that may occur during the course of the Work. IES will maintain comparable insurance.
5. *Change Orders.* The scope of the work to be performed under the Contract is limited to the Work specifically described in the Contract. Should additional or different work be required or requested, IES may ask Customer to authorize such additional or different work by signing a change order form. These Terms shall be incorporated into and made a part of any signed change order form authorizing additional or different Work. IES shall have the right to cease performance of additional or different Work if a signed change order authorizing such additional or different work is not obtained from Customer. Notwithstanding the foregoing, the failure of IES to request or require such a change order shall not limit IES's right to receive payment for additional or different Work performed at Customer's request.
6. *Payment Terms; Penalties for Late Payment.* Invoices are due and payable to IES within 30 days of receipt or as otherwise provided in the Contract. If Customer fails to make any payment when due, Customer shall (i) include a 10% late payment fee with its payment (calculated on the amount of the late payment); and (ii) pay interest of one and one-half percent (1.5%) per month on the unpaid balance. Disputes regarding the Work shall not, under any circumstances, be grounds for withholding payment under the terms of the Contract.
7. *Work Stoppage.* IES shall have the right to cease performing the Services if any payment is not made to IES when due. If IES's performance is stopped for a period of thirty (30) days or more for any reason other than IES's breach of the Agreement, IES may, at its option, upon five (5) days written notice to Customer, demand and receive payment for:
(i) all Services performed and for Materials ordered or supplied prior to the Work stoppage; and (ii) any other loss sustained due to the Work stoppage, including IES's normal overhead plus its profit margin. Thereafter, IES shall be relieved from any further liability for performance of the Work. If performance of the Services stops for any reason, Customer shall provide for the protection of all Materials on the Job Site and shall be responsible for any damage to or loss of those Materials.
8. *Remedies in Event of Default by Customer.* If Customer defaults in any of its obligations under the Contract, IES shall have the right to recover, as damages, at IES's option, either the reasonable value of Work performed by IES or the balance of the Price plus any other damages sustained as a result of Customer's default. Title to and ownership of all Materials installed by IES is expressly agreed to be and remain in IES until Customer pays IES in full. In the event of default by Customer, in addition to any other legal remedies or processes available, beginning five (5) days after the event giving rise to the default, IES shall have the right to terminate the Contract and enter the Job Site to take possession of and remove its Materials. Such entry may be made by IES without recourse to any legal proceedings for that purpose, without notice to Customer, and without any liability for IES arising therefrom.

9. *Environmental Conditions.* The Services do not include the detection, identification, abatement, encapsulation, or removal of any Hazardous Substance. "Hazardous Substance" is defined herein as any substance, whether solid, liquid, or gas, which is a physical or health hazard when it is inhaled, ingested, or otherwise comes in contact with any person present in the area where it is located and includes, without limitation, asbestos in either friable or nonfriable condition, and excludes any substance IES brings onto the Job Site for purposes of performing the Work. Customer represents and warrants to IES that there is no Hazardous Substance in or under any area of the Job Site wherein the Work is to be performed which has not been fully disclosed to IES in advance of the performance of the Work. In the event IES encounters on the Job Site any Hazardous Substance in the course of performing the Work, IES may immediately discontinue performance of the Work and remove its employees and subcontractors from the Job Site, and IES shall not resume the Work in the affected area until the Hazardous Substance is removed from the Job Site or rendered harmless to IES's sole satisfaction. IES will not be liable for any delay in the completion of the Work due to the presence of any Hazardous Substance at the Job Site. If, in the sole determination of IES, any Hazardous Substance or threat of harm therefrom cannot be removed from the Job Site in a reasonable amount of time, IES may terminate the Contract and IES shall be entitled to those damages set forth in Section 7 hereof. IES shall not be required to perform any work relating to Hazardous Substances unless IES consents to do such work and IES is authorized to do such work by any applicable governmental authority having jurisdiction over such work. Notwithstanding any other provision of the Contract, Customer agrees to defend (with counsel satisfactory to IES), indemnify, and hold harmless IES and its shareholders, directors, officers, employees, and agents from and against any and all liabilities, claims, actions, causes of action, losses, damages, fees, or costs (including without limitation attorneys' fees and court costs) arising out of any claims of Customer, residents, tenants, guests, invitees, or other third parties, which claims are based on or arise out of the presence of any Hazardous Substance at the Job Site.

10. *Indemnification and Waiver.* Customer agrees, to the fullest extent permitted by law, to defend (with counsel satisfactory to IES), indemnify, and hold harmless IES and its shareholders, directors, officers, employees, and agents from and against any and all liabilities, claims, actions, causes of action, losses, damages, fees, or costs (including without limitation attorneys' fees and court costs) (the "Damages"), arising out of any claims of residents, tenants, guests, employees, invitees, or other third parties caused by Customer or its agents.

11. *Arbitration of Disputes.* In the event of any dispute between the Parties hereto, whether involving a claim in tort, contract, or otherwise, the same shall be submitted to arbitration. Arbitration shall be compulsory and binding and, except as provided herein, shall be conducted and governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure. Within a reasonable period of time after receipt of notice of demand for arbitration, the Parties to the dispute shall each appoint a third party arbitrator and give notice of such appointment to the other. Within a reasonable period of time after the appointment of the third party arbitrators, the two arbitrators so selected shall select a neutral arbitrator and give notice of the selection thereof to the Parties. The arbitrators shall hold a hearing within a reasonable period of time from the date of notice of selection of the neutral arbitrator. The decision of the arbitration panel will be final and conclusive upon both Parties. Venue for the arbitration of disputes shall lie in Sacramento County, California. Either Party is entitled to utilize attachment and mechanic's lien proceedings concurrently with arbitration proceedings and neither Party will be held to have waived the right to arbitrate by virtue of levy of attachment or recording and perfecting a mechanic's lien. The prevailing Party shall be entitled to recover its fees and costs (including reasonable attorneys' fees).

12. *Miscellaneous.* The Agreement constitutes the complete and entire agreement between the Parties with regard to the Work. The Agreement, and any dispute arising from the relationship between the Parties, shall be governed by California law, exclusive of its choice of law provisions. No action or claim of any kind, whether arising in tort, contract, statute or otherwise, arising from or in any way related to this Agreement, or the performance thereof, shall be commenced by any Party against the other more than two (2) years after the earlier of (i) the completion of Work under the Contract; or (ii) the termination of the Contract by either Party. All notices, demands, or other communications given hereunder shall be in writing and shall be sufficiently given if personally delivered or delivered by overnight delivery service or sent by registered or certified mail, first class, postage prepaid, addressed to the respective Parties at the addresses provided in the Contract, or such other address with respect to any Party hereto as such Party may from time to time notify (as provided above) to the other Party hereto. Any such notice, demand, or communication shall be deemed to have been given: (a) if mailed as provided above, as of the close of the third (3rd) business day following the date so mailed; and (b) if personally delivered or sent by overnight delivery, on the date delivered. The terms and conditions of the Agreement that by their nature, sense, or context survive or are intended to survive expiration or termination of the Agreement, including, not by way of limitation, arbitration, indemnification, and limitation of warranty and liability provisions, shall survive the expiration or termination of the Agreement. No provision of the Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any of the provisions of the Agreement. The Agreement shall be interpreted without regard to any presumption against the Party that was responsible for its drafting and in an even-handed manner rather than against the drafting Party. In the case any provision of the Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining portions will not in any way be affected or impaired thereby.